

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES THOMAS,)	No. C 05-2544 JSW (PR)
)	
Petitioner,)	
)	
vs.)	ORDER TO SHOW CAUSE
)	
J. BROWN, Warden,)	
)	
Respondent.)	
)	

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at San Quentin State Prison, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the Board of Prison Terms ("BPT") denial of parole during parole suitability proceedings. Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner pled guilty in Los Angeles County Superior Court to second-degree murder. On August 2, 1983, he was committed to a term of sixteen years-to-life in state prison. In this habeas action, Petitioner does not challenge his conviction, but instead challenges the execution of his sentence. Petitioner alleges that he was told by his attorney that if he accepted the plea agreement he would be eligible for parole in ten years and, if he behaved, he could expect to be paroled after having served between ten and twenty-one years of his sentence. However, on July 20,

2004, after having served more than twenty-two years in prison, the BPT found Petitioner unsuitable for parole at his eighth parole suitability hearing. Petitioner contends that the denial of parole by the BPT violates his constitutional right to due process, violates the terms of his plea agreement, and denies him of his right to a trial by jury under the Sixth Amendment. He alleges that he has exhausted state judicial remedies as to all of the claims raised in his federal petition.

DISCUSSION

I. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." *Id.* § 2243.

II. Legal Claims

Petitioner alleges that his constitutional rights were violated by the parole denial by the BPT in 2004. Liberally construed, the allegations are sufficient to warrant a response from Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369 (1987); *see, e.g., Morales v. California Dep't of Corrections*, 16 F.3d 1001, 1005 (9th Cir. 1994), *rev'd on other grounds*, 514 U.S. 499 (1995).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**

1 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
2 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
3 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of
4 all portions of the state trial record that have been transcribed previously and that are
5 relevant to a determination of the issues presented by the petition. If Petitioner wishes to
6 respond to the answer, he shall do so by filing a traverse with the Court and serving it on
7 Respondent within **thirty (30)** days of his receipt of the answer.

8 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
9 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
10 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the
11 Court and serve on Respondent an opposition or statement of non-opposition within
12 **thirty (30)** days of receipt of the motion, and Respondent shall file with the Court and
13 serve on Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

14 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
15 the Court informed of any change of address by filing a separate paper captioned "Notice
16 of Change of Address." He must comply with the Court's orders in a timely fashion.
17 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
18 to Federal Rule of Civil Procedure 41(b)

19 IT IS SO ORDERED.

20 DATED: Jan. 12, 2006

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22 JEFFREY S. WHITE
23 United States District Judge
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